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(Judgment reserved on 02.07.2026)

(Judgment delivered on 17.07.2026)



2026:AHC:145750-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 903 of 2013

Surendra Sharma

.....Appellant(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Appellant(s)	: J.p. Singh
Counsel for Respondent(s)	: Shashi Prakash Singh, B.p. Singh, C.S.C.

Court No. - 21

**HON'BLE MAHESH CHANDRA TRIPATHI, J.
HON'BLE KUNAL RAVI SINGH, J.**

(Per: Mahesh Chandra Tripathi, J.)

1. Heard Shri J.P. Singh, the learned counsel for the appellant-petitioner

2. The instant intra-court appeal is preferred to quash the judgment and order dated 29.4.2013 passed by Hon'ble Single Judge in Civil Misc. Writ Petition-A No.23422 of 2013 (Surendra Sharma vs. State of U.P. and 3 others) as well as order dated 11.4.2013 passed by Respondent No.3 – District Basic Education Officer, Azamgarh and a direction be issued to respondents to ensure that appellant is paid his arrears of salary from State Exchequer from the date his salary was stopped.

FACTS:-

3. The petitioner was appointed as an Assistant Teacher in the Primary Section of Smt. Ram Daiyee Balika Junior High School, Dariya Dayalpur, Azamgarh (hereinafter referred to as the Institution) on 01.07.1977 and has been working in the institution since then. The institution was initially recognized as a Primary School by an order dated 30.03.1974 and was subsequently granted recognition as a Junior High School with effect from 01.07.1977 by order dated 14.03.1978. In the year 1980, the institution was brought under the grant-in-aid scheme. The Committee of Management submitted the names of its teachers and employees for payment of salary from the State Exchequer. By order dated 03.11.1980, the District Basic Education Officer approved the petitioner's appointment and included his name in the approved list for payment of salary. The petitioner was paid salary from the State Exchequer until October, 1981, whereafter payment of salary was stopped.

4. One Smt. Jagdamba Srivastava, a similarly situated teacher, filed Civil Misc. Writ Petition No.10389 of 1991 (Smt. Jagdamba Srivastava

(Smt. Gayatri Rai vs. State of U.P. and others), which was allowed on 08.03.1996 directing payment of salary. Pursuant thereto, she has been receiving salary from the State Exchequer.

5. The petitioner thereafter approached the District Basic Education Officer for release of his salary. As no decision was taken, he along with another teacher filed Writ Petition No.33545 of 1997 (Smt. Ram Daiyee Devi and another vs. State of U.P. and others), which was disposed of on 22.07.1998 with a direction to the District Basic Education Officer to decide the representations of the petitioners therein. Thereafter, by order dated 08.10.1998, the District Basic Education Officer directed the Accounts Officer to examine the records. The Accounts Officer, by order dated 31.10.1998, granted financial approval for payment of salary to the petitioner. However, though the salary bill was initially processed, payment was not released. Subsequently, by order dated 12.04.1999, the District Basic Education Officer rejected the petitioner's claim for salary.

6. The petitioner challenged the order dated 12.04.1999 by filing Writ Petition No.21720 of 1999 [Smt. Ram Daiyee Devi and another vs. State of U.P. and others], in which, an interim order dated 31.10.2001 was passed directing payment of current salary to the petitioner in the same manner as being paid to Smt. Gayatri Rai. The writ petition was, however, dismissed by judgment dated 28.08.2003. Aggrieved thereby, the petitioner preferred Special Appeal No.1978 of 2009 [Smt. Ram Daiyee Devi and another vs. State of U.P. and others]. The Division Bench, by judgment dated 23.11.2012, allowed the appeal, set aside the judgment of the learned Single Judge and remitted the matter to the District Basic Education Officer, Azamgarh for fresh consideration.

of 2013 (Surendra Sharma vs. State of U.P. and 3 others) with the following prayer:

"a) to issue a writ, order or direction in the nature of certiorari quashing the order impugned dated 11.4.2013 (Annexure-16 to the writ petition) passed by Respondent No.3- the District Basic Education Officer, Azamgarh.

b) to issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure that petitioner is paid his arrears of salary from State Exchequer from the date his salary was stopped within the time specified by the Hon'ble Court.

(c) to issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure that petitioner is paid current monthly salary from the State Exchequer as and it falls due.

d) to issue such other and further writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case; so that justice be done.

e) to award cost of the writ petition throughout to the Petitioner as against the respondents."

7. The aforesaid writ petition (Writ-A No.23422 of 2013) was filed by the petitioner claiming that he was entitled to receive salary after his institution was brought under the grant-in-aid scheme because he had been appointed against a sanctioned post and his appointment had been approved by the District Basic Education Officer on 03.11.1980. It was also claimed that another teacher of the same institution, Smt. Gayatri Rai, had been granted salary through court orders, and therefore denial of the same benefit to him was discriminatory.

8. Learned Single Judge noted that the petitioner had earlier filed a writ petition (No.21720 of 1999), which was dismissed on 28.08.2003, but in a special appeal (No.1978 of 2009), the Division Bench vide order dated 23.11.2012 directed the District Basic Education Officer to pass a fresh

held that Clause 10 specifically restricted payment of salary under the grant-in-aid scheme only to the teachers and employees working in Classes VI to VIII, and expressly excluded the teachers and employees working in the primary section (Classes I to V). Since the petitioner was admittedly appointed as a teacher in the primary section, he was not entitled to salary under the grant-in-aid scheme.

9. Learned Single Judge further held that the petitioner had never challenged the validity of Clause 10 of the Government Order, and after more than 31 years such a challenge could not be permitted. The benefit granted to Smt. Gayatri Rai could not be treated as a precedent because it had been granted through judicial intervention without consideration of Clause 10. No other Government order extending grant-in-aid benefits to primary teachers was produced before the Court. Accordingly, the learned Single Judge held that the petitioner was not entitled to payment of salary under the Government Order dated 03.05.1982 and dismissed the writ petition on 29.04.2013. Aggrieved with the said order, the instant intra-court appeal has been preferred.

Submissions made on behalf of Appellant:-

10. Shri J.P. Singh, learned counsel for the appellant-petitioner, vehemently submits that the learned Single Judge has erred in dismissing the writ petition by placing reliance upon Clause 10 of the Circular dated 03.05.1982. He submits that the appellant's appointment had already been approved by the District Basic Education Officer on 03.11.1980 and, pursuant thereto, he was paid salary from the State Exchequer. It is contended that the Circular dated 03.05.1982 was issued subsequently

institution had already been brought under the grant-in-aid scheme in the year 1980 and the appellant had been granted approval before issuance of the Circular. Learned counsel further submits that Clause 14 of the same Circular provides protection to teachers appointed prior to the enforcement of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978¹, but the said provision has not been considered.

11. Learned counsel further submits that the learned Single Judge failed to appreciate that another Assistant Teacher of the same institution, namely Smt. Gayatri Rai, who was appointed on the same date and whose appointment had also been approved, has been receiving salary from the State Exchequer pursuant to the orders passed by this Court. He pressed that It is submitted that the claim of Smt. Gayatri Rai was based upon the judgment dated 15.10.1993, wherein this Court held that the provisions of the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978² (U.P. Act No.6 of 1979) apply to institutions having both Primary and Junior High School sections and that teachers of the Primary Section are also entitled to payment of salary. The said judgment was affirmed by the Hon'ble Supreme Court upon dismissal of the Special Leave Petition filed by the State. He further submitted that despite the matter having been remanded by the Division Bench for fresh consideration, the District Basic Education Officer rejected the appellant's claim solely on the basis of Clause 10 of the Circular dated 03.05.1982, without properly considering the earlier approval granted to the appellant, the provisions of the U.P. Act No.6 of 1979 (The 1978 Act), or the binding judicial pronouncements governing the issue

U.P. v. Pawan Kumar Divedi.³ He submits that the very question involved in the present appeal - whether a teacher working in the primary section (Classes I to V) of an institution that also runs Classes VI to VIII is entitled to payment of salary under Section 10 of the 1978 Act - stands conclusively answered by the Constitution Bench in favour of such teachers. He submits that the Supreme Court, having classified Junior High Schools into three categories, held that for an institution running Classes I to VIII as a single unit (the exact nature of the institution in question), the applicability of Section 10 of the 1978 Act "does not create any difficulty," and that even in the more contested category of institutions where the primary section is added later to an already-recognised Senior Basic School, primary-section teachers are equally entitled to salary under the said provision. Learned counsel submits that Clause 10 of the Circular dated 03.05.1982, being a mere executive instruction, cannot be read to restrict a statutory liability that has since been authoritatively construed by the Supreme Court, and that the impugned order and judgment, having proceeded solely on the strength of Clause 10 without the benefit of this subsequent pronouncement, cannot be sustained.

13. Learned counsel has further placed reliance upon the judgment of this Court in **Singasan Sharma v. State of U.P. and 3 Others**⁴ in support of the appellant's alternative submission that a teacher whose appointment has been duly approved by the competent authority cannot be denied salary merely on account of subsequent administrative reconsideration or technical objections. He submits that the Division Bench, following the judgment of the Hon'ble Supreme Court in **Radhey Shyam Yadav v. State of U P**⁵ held that the State cannot take advantage

appointment was approved by the District Basic Education Officer as far back as 03.11.1980, and that this approval has never been disturbed or withdrawn by any competent authority.

Submissions made on behalf of the State-respondents:-

14. Per contra, Shri J.N. Maurya, learned Chief Standing Counsel along with Shri Fuzail Ahmad Ansari, learned Standing Counsel appearing for the State-respondents, supports the judgment of the learned Single Judge as well as the order dated 11.04.2013 passed by the District Basic Education Officer. He submits that although the appellant was initially paid salary after the institution was brought under the grant-in-aid scheme, the payment was rightly discontinued from October, 1981 as the appellant was working in the Primary Section attached to the Junior High School and was not entitled to receive salary from the State Exchequer under the provisions governing payment of salaries. He submits that the appellant's claim was considered on several occasions. His representation was rejected by the District Basic Education Officer on 12.04.1999, whereafter Writ Petition No.21720 of 1999 was dismissed by the learned Single Judge on 28.08.2003. Although the Division Bench, in Special Appeal No.1978 of 2009, remitted the matter for fresh consideration, the District Basic Education Officer, after reconsidering the matter in terms of the remand order, has again rejected the appellant's claim by order dated 11.04.2013.

15. Learned Standing Counsel further submits that the District Basic Education Officer rightly relied upon Clause 10 of the Circular dated 03.05.1982, which specifically provides that salary under the 1978 Act is

the said Circular and that the payment of salary to Smt. Gayatri Rai could not be treated as a precedent in the absence of any grant-in-aid order extending such benefit to teachers of the Primary Section. Learned Standing Counsel also places reliance upon the amendments introduced by the Uttar Pradesh Basic Education (Amendment) Ordinance, 2017 and the corresponding amendment in the 1978 Act, whereby "Junior Basic School" and "Junior High School" have been separately defined. He submits that the amendments reinforce the distinction between the two institutions and support the stand taken by the State. He, therefore, submits that the present special appeal lacks merit and is liable to be dismissed.

Discussion and Findings:-

16. Before dealing with the rival contentions, it is necessary to notice the statutory provision under which the claim is made. Section 10 of the 1978 Act reads as follows:

"10. Liability in respect of salary.— (1) The State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after the appointed day.

(2) The State Government may recover any amount in respect of which any liability is incurred by it under sub-section (1) by attachment of the income from the property belonging to or vested in the institution as if that amount were an arrear of land revenue due from the institution.

(3) Nothing in this section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee."

17. The word "institution" is defined in Section 2(e) of the 1978 Act as *"a recognized Junior High School for the time being receiving maintenance grant from the State Government."* At the relevant time, the expression "Junior High School" itself stood undefined in the 1978 Act.

18. The Constitution Bench in **Pawan Kumar Divedi** (supra) considered the same issue that arises in this appeal. The question was whether a teacher working in the primary section (Classes I to V) of a school that also runs Classes VI to VIII is entitled to salary under Section 10 of the 1978 Act, or whether this benefit is available only to teachers of Classes VI to VIII. In paragraph 42, the Supreme Court divided such schools into three categories:

"42. It is important to notice here that recognised Junior High Schools can be of three kinds:

(i) having Classes I to VIII, i.e., Classes I to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School);

(ii) a school as above and upgraded to High School or intermediate standard and;

(iii) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school."

(emphasis supplied)

19. The Supreme Court held that there was no difficulty in applying Section 10 of the 1978 Act to the first two categories of schools. It observed that where a school has Classes I to VIII, or where such a school is later upgraded, all teachers are covered by Section 10. The Court further explained that if a Primary School (Classes I to V) is added to a recognised and aided Junior High School (Classes VI to VIII), both sections become one integrated Basic School. Therefore, the expression "Junior High School" in the 1978 Act should not be given a narrow meaning. It refers to a Basic School imparting education up to Class VIII, and not merely to Classes VI to VIII. For ready reference, paras - 42.1 and 42.2 are reproduced hereinbelow:

"42.1. As regards the first two categories of Junior High Schools, the applicability of Section 10 of the 1978 Act does not create any difficulty. The debate which has centered round in this group of appeals is in respect of

Educational Code (revised edition, 1958), inter alia, provides that Basic Schools include single schools with Classes I to VIII. In our view, if a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. The expression "Junior High School" in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. We do not think it is appropriate to give narrow meaning to the expression "Junior High School" as contended by the learned senior counsel for the state. That Legislature used the expression Junior High School and not the Basic School as used and defined in the 1972 Act, in our view, is insignificant. The view, which we have taken, is fortified by the fact that in Section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated."

(emphasis supplied)

20. The Hon'ble Supreme Court also decided the issue relating to the third category of schools, where the primary section was added after the Junior High School had already received recognition and grant-in-aid. The Court held that teachers of the primary section are also entitled to the benefit of Section 10 of the 1978 Act. It observed that both the Primary and Junior High School sections are governed by the same Board of Basic Education under the 1972 Act. The Hon'ble Supreme Court further held that denying salary to primary teachers in such schools would result in unequal treatment and could make the 1978 Act unconstitutional. Therefore, the Court affirmed its earlier decision in *Vinod Sharma vs. Director of Education (Basic) U.P.*⁶ and held that the expression "Junior High School" includes Classes I to V even where those classes were added later after obtaining separate recognition. For ready reference, para-44 of **Pawan Kumar Divedi** (supra) is reproduced hereinbelow:

"44. Though in the Reference Order, the two-Judge Bench has observed that the High Court in the first round in Vinod Sharma (1998) 3 SCC 404 did not appreciate that the education at the primary level has been separated from the Junior High School level and separately entrusted under the different enactments to the Board constituted under Section 3 of the 1972 Act and the

argument of Dr. M.P. Raju that the schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act. Moreover, any other view may render the provisions of the 1978 Act unconstitutional on the ground of discrimination. In our considered view, any interpretation which may lead to unconstitutionality of the provision must be avoided. We hold, as it must be, that Junior High School necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government."

45. We accordingly affirm the view taken by the three-Judge Bench in Vinod Sharma (supra). Our answer to the question is in the affirmative....."

(emphasis supplied)

21. The above principles fully apply to the present case. Smt. Ram Daiyee Balika Junior High School, Dariya Dayalpur, Azamgarh, was recognized as a Primary School on 30.03.1974 and was recognized as a Junior High School with effect from 01.07.1977. Since then, it has been functioning as one institution running Classes I to VIII under the same management. It clearly falls within the first category identified in **Pawan Kumar Divedi** (*supra*), where the Supreme Court held that Section 10 applies without any difficulty. Therefore, the appellant, who worked as a teacher in the primary section of this institution, is also a teacher of an institution covered by Section 10 of the 1978 Act.

22. This question has already been decided in respect of the same institution. By judgment dated 15.10.1993 in *Civil Misc. Writ Petition No. 10389 of 1991 (Smt. Jagdamba Srivastava & Another)*, a learned Single Judge of this Court rejected the State's argument that only

"..... The institution is a Junior High School which runs both Primary as well as Junior High School sections, U.P. Act No. 6 of 1979, therefore, will be applicable to all the classes including Primary and Junior High School sections and all the teachers of Primary or Junior High School are entitled for payment of salary under the said act."

23. The judgment dated 15.10.1993 became final because the Special Leave Petition filed by the State against it was dismissed. Thus, even before the Constitution Bench decision in **Pawan Kumar Divedi** (supra), this Court had already taken the same view in respect of this very institution.

24. However, the order dated 11.04.2013 passed by the District Basic Education Officer, Azamgarh, and the judgment dated 29.04.2013 passed by the learned Single Judge are based entirely on Clause 10 of the Circular dated 03.05.1982 issued by the Director of Education (Basic), U.P. Clause 10 provides that salary under the Payment of Salaries Act is payable only to teachers and other employees working in Classes VI to VIII, and that the benefit is not available to teachers and employees working in Classes I to V. The Clause 10 reads as under:

"10- अनुलग्नक में उल्लिखित विद्यालयों में कक्षा 6 से 8 तक के लिये कार्यरत अध्यापकों एवं अन्य कर्मचारियों को ही वेतन वितरण अधिनियम के अन्तर्गत वेतनादि का भुगतान किया जाय। किसी भी विद्यालय से संलग्नक कक्षा 1 से 5 तक की कक्षाओं में कार्यरत अध्यापक एवं अन्य कर्मचारियों पर ये आदेश लागू न होंगे। अतः उन कर्मचारियों को किसी भी प्रकार का कोई अनुदान अन्य आदेशों के अन्तर्गत देय न होगा।"

25. Clause 10 provides that, under the 1978 Act, salary is payable only to teachers and other employees working in Classes VI to VIII of the schools listed in the Annexure. It further states that the 1978 Act will not

10 of the 1978 Act. Once the Supreme Court has interpreted the scope of Section 10, that interpretation is binding. An executive circular cannot override or narrow the meaning of a statutory provision as explained by the Supreme Court. Therefore, the learned Single Judge and the District Basic Education Officer erred in relying only on Clause 10 to hold that teachers of the Primary Section were not entitled to salary. They failed to consider Section 10 of the 1978 Act in the light of the law laid down by **Pawan Kumar Divedi** (*supra*). For this reason, their finding cannot be sustained.

26. It is also necessary to clarify another point on which the learned Single Judge appears to have been mistaken. The learned Single Judge held that the appellant could not challenge Clause 10 of the Circular dated 03.05.1982 after a gap of 31 years. This reasoning would have been correct if the appellant had challenged the validity of Clause 10 itself. However, that is not the appellant's case. The appellant has consistently maintained that he is entitled to salary under Section 10 of the 1978 Act, irrespective of Clause 10. This issue depends on the correct interpretation of Section 10, which was authoritatively settled by the Constitution Bench in 2014. Therefore, there is no question of delay or limitation in relying upon the later decision of the Supreme Court interpreting the existing law.

27. It is also important to notice that the law was later amended. By the Uttar Pradesh Basic Education (Amendment) Ordinance, 2017, Section 2 of the U.P. Basic Education Act, 1972 was changed to define a "**Junior Basic School**" as a school teaching **Classes I to V** and a "**Junior High School**" as a school teaching **Classes VI to VIII**. At the same time,

"(ee) "Junior High School" means an institution which is different from High School or Intermediate College in which education is imparted to boys or girls or to both from class sixth to class eight."

28. This amendment, introduced by U.P. Act No. 3 of 2018, gives statutory effect to the narrower meaning of "Junior High School" which the Constitution Bench in **Pawan Kumar Divedi** (supra) had earlier rejected. However, this is a substantive change in the law and therefore applies only from the date it came into force. It does not affect the appellant's claim for salary for the period before the amendment, because that claim is governed by the law laid down in **Pawan Kumar Divedi** (supra).

29. This view is supported by the recent decision of the Hon'ble Supreme Court in **Directorate of Revenue Intelligence v. Raj Kumar Arora and Others**⁷. In that case, the Court considered whether a later Supreme Court judgment, which overruled an earlier one, would apply to cases that were already pending when the later judgment was delivered. The Court held that, as a general rule, Supreme Court judgments interpreting a statute apply retrospectively. Such a judgment does not create a new law but only declares what the law has always meant. Therefore, even cases filed before the later judgment are governed by the law as clarified by that judgment, and not by the earlier view that has been overruled. The Court also clarified that this rule applies unless it expressly states that its decision will operate only prospectively.

30. The Constitution Bench judgment in **Pawan Kumar Divedi** (supra)

treated as declaring the true meaning of that provision from the very beginning and governs the present appeal, which has remained pending throughout.

31. This principle, however, has an important limitation. It does not reopen cases that had already become final before the law was clarified. The Supreme Court expressly recognised this limitation in **Raj Kumar Arora** (supra), holding that judgments which had already attained finality under the earlier view would remain undisturbed. The same principle is reflected in the Explanation to Order XLVII Rule 1 of the Code of Civil Procedure, 1908, and in the consistent decisions of the Supreme Court that a subsequent change in law by a coordinate or larger Bench is not, by itself, a ground to review a judgment that has already become final, as held in **Sanjay Kumar Agarwal v. State Tax Officer**⁸, **and State (NCT of Delhi) v. K.L. Rathi Steels Ltd.**⁹ This limitation would equally have applied to the appellant if his own claim had become final before 2014, a point discussed further below.

32. Learned counsel for the appellant also relied on the judgment of **Singasan Sharma** (supra). That case, however, did not deal with the interpretation of Section 10 of the 1978 Act. It was related to the denial of retirement benefits to teachers whose appointments had been approved many years earlier, on the basis of a later administrative inquiry, despite an earlier court decision that had become final. Relying on **Radhey Shyam Yadav v. State of U.P.**¹⁰, the Division Bench held that once a teacher's appointment has been approved and the teacher has served for many years, salary and service benefits cannot be denied merely because of procedural irregularities or mistakes committed by the

*“10. To further support his contention, learned counsel for the appellants relies on the decision of the Supreme Court in Radhey Shyam Yadav v. State of Uttar Pradesh and Others, (2024) 11 SCC 770, wherein Supreme Court examined the question whether a teacher, whose appointment had been approved by the competent authority and who had discharged duties for a considerable length of time, could be denied salary and service benefits on the ground of alleged irregularities in appointment. In this case the Supreme Court held that once an appointment is approved and the teacher has worked for years, salary cannot be withheld merely on the basis of procedural lapses or alleged irregularities attributable to the management or the authorities. It was further held that **the State cannot be permitted to take advantage of its own lapse, or that of its officers, in granting approval and thereafter deny salary and service benefits. The Court emphasised that a teacher who is not at fault cannot be penalised for alleged mistakes of the management, especially when the employee has in fact rendered service and the employer has enjoyed the benefit thereof.**”*

(emphasis supplied)

33. Although the issue decided in **Singasan Sharma** (supra) was different, the principle laid down in that case supports the appellant to the extent that his appointment was approved by the District Basic Education Officer, Azamgarh on 03.11.1980, and that approval has never been cancelled or withdrawn. However, unlike **Singasan Sharma** (supra), there is no specific pleading in the present case to show that the appellant actually continued to teach in the institution throughout the entire period for which salary is claimed. This is a separate question of fact. It is different from the legal question of entitlement under Section 10 and is considered separately below.

34. It is also necessary to note that the record does not show the appellant's employment status after the dismissal of his writ petition on 29.04.2013. It is not clear whether he continued in service, retired on attaining the age of superannuation, or whether his service ended for any other reason. This appeal has been decided only on the question of his

29.04.2013, whether by resignation, removal, retirement, or otherwise, he shall be entitled to salary only for the period during which he actually remained in service. No direction for payment of salary beyond that date shall follow from this judgment. However, if the appellant claims that his service was discontinued illegally, he shall be free to seek any remedy available to him in law. This judgment does not decide that issue.

Effect of the change in the legal landscape:-

35. It is important to understand the mistake in the present case. The order dated 11.04.2013 passed by the District Basic Education Officer and the judgment dated 29.04.2013 passed by the learned Single Judge were delivered before the Constitution Bench of the Supreme Court decided **Pawan Kumar Divedi** (supra). Therefore, neither of them had the benefit of that decision. The mistake was not that they incorrectly applied the law as it was then understood. The correct legal position was clarified only later by the Constitution Bench.

36. When the impugned orders were passed, the question whether a teacher of the Primary Section in a school having Classes I to VIII was entitled to salary under Section 10 of the 1978 Act had not been finally settled. The issue was pending before a larger Bench of the Supreme Court because the earlier decision in **Vinod Sharma** (supra) had been doubted. In these circumstances, the District Basic Education Officer and the learned Single Judge cannot be blamed for relying on Clause 10 of the Circular dated 03.05.1982, as that was the legal position understood at that time. This judgment should not be taken as criticism

Therefore, the decision in **Pawan Kumar Divedi** (*supra*) applies to the present case, and this Court is bound to follow it.

38. This appeal has been pending since 1999. During this period, the law relating to the appellant's claim was finally settled by the Supreme Court while the case was still pending. Therefore, the appeal must be decided according to the law declared by the Supreme Court, and not according to the legal position that existed when the impugned orders were passed.

39. The instant case is not a case where the dispute stood finally decided before the Constitution Bench delivered its judgment. We express no opinion on such cases. In the present case, the appellant's claim never attained finality. The Division Bench, by its order dated 23.11.2012 in Special Appeal No. 1978 of 2009, remanded the matter for fresh consideration whereafter the respondent no.3 passed the impugned order on 11.04.2013. The same was challenged in writ petition which was decided on 29.04.2013, which has been assailed in the present special appeal. The lis was pending before this court since 2013. Therefore the law laid down in **Pawan Kumar Divedi** (*supra*) fully applies to the present case.

Conclusion:-

40. For the reasons discussed above, we hold as follows:

(i) The institution is a single Junior High School running Classes I to VIII. It falls within the first category identified by the Constitution Bench in **Pawan Kumar Divedi** (*supra*), where the Supreme Court held that Section 10 of the 1978 Act clearly

District Basic Education Officer and the learned Single Judge were not justified in relying on that circular to deny salary to the appellant.

(iii) The appellant's claim is not barred by delay. He is not challenging the validity of Clause 10 of the Circular. He is only claiming the benefit of the correct interpretation of Section 10 of the 1978 Act, as later declared by the Supreme Court.

(iv) The 2018 amendment, which gives a narrower meaning to the expression "Junior High School", applies only from the date it came into force. It does not affect the appellant's claim for salary for the period before the amendment.

(v) The judgment dated 29.04.2013 passed by the learned Single Judge and the order dated 11.04.2013 passed by the District Basic Education Officer were based only on interpretation of Clause 10 of the Circular dated 03.05.1982, but in the light of the law later laid down in **Pawan Kumar Divedi**, they cannot be sustained.

(vi) However, the appellant will be entitled to salary under Section 10 of the 1978 Act only for the period during which he actually worked and taught in the institution. Since there is no clear pleading or material on record showing the exact period of service, this Court cannot determine the amount of salary payable. That exercise should be carried out by the competent authority after examining the relevant service and attendance records.

hereby set aside. The special appeal is accordingly disposed of with the following directions:

(i) The matter is remitted to the District Basic Education Officer, Azamgarh, for fresh consideration in the light of the law laid down in **Pawan Kumar Divedi** (supra). The District Basic Education Officer shall verify, from the service records, attendance registers, and any other relevant material, (i) the period during which the appellant actually imparted education in the institution, and (ii) whether he has retired, or his service ended, and if so, from which date? If it is found that the appellant actually worked in the institution, he shall be paid arrears of salary for the verified period, from November 1981 up to the earlier of (a) the commencement of U.P. Act No. 3 of 2018, or (b) the date on which his service came to an end. This judgment does not decide any dispute regarding the end of his service and does not prevent him from taking any other legal remedy available to him if he claims that his service was terminated illegally or involuntarily.

(ii) This exercise shall be completed within a period of three months from the date a certified copy of this order is produced before the District Basic Education Officer, after affording an opportunity of hearing to the appellant.

(iii) There shall be no order as to costs.